IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1459 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)
Versus
SHARMA NILESH NATVARLAL C/O ALL GUJ.KAMDAR KARMACHARI UNIO - Respondent(s)

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Appearance :
MR. S.R. GORI, AGP, for Petitioner(s) : 1 - 2.
MR TR MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 07/04/2006

ORAL JUDGMENT

The State of Gujarat and another, petitioners have filed this petition with a

prayer that this Court may issue a writ of certiorari and any other order or direction quashing and setting aside the order dated 25.11.2005 in Reference (LCA) No. 1105 of 1998. The petition was filed on 30.1.2006. Mr. Gori, learned AGP, appears on behalf of the State of Gujarat. Heard Mr. Mishra, learned advocate, on behalf of the respondents.

The learned A.G.P., states that Shri Sharma Nilesh Natvarlal and others were engaged by the office of Collector, Ahmedabad, petitioner No. 2, on purely temporary and ad hoc basis for election work. The Collector terminated the services of the respondents with effect from 31.3.1998 upon completion of work for which they were engaged.

Being aggrieved and dissatisfied with the same, the respondents through Union raised industrial dispute before the Industrial Court,

inter alia contending that petitioner No. 2 has terminated their services illegally. The said dispute was referred for adjudication to the Labour Court, Ahmedabad, being Reference (LCA) No. 1105 of 1998. The Presiding Officer of the Labour Court, Ahmedabad, by judgement and order dated 16.12.2000 in the Reference (LCA) No. 1105 of 1998 was pleased to hold that the Reference of the respondent namely Sharma Nilesh Natvarlal be accepted and the Collector, Ahmedabad, the first party is directed to reinstate the respondents namely, Sharma Nilesh Natvarlal, Mahesh A. Parmar, Naginbhai S. Parmar, Babubhai G. Vankar, M.R. Vyas, D.K. Solanki, K.S. Shrimali, M.U. Shaikh, G.U. Parmar, Digvijay M. Parmar with full salaries and also to pay cost of Rs. 250/- to each workman. It is the case of the Government that the said order was passed without hearing the Government.

Being aggrieved and dissatisfied with the

said order, the petitioners preferred Miscellaneous Aplication No. 331 of 2001 under Rule 26-A of the Industrial Disputes (Gujarat) Rules, 1966 which provides setting aside ex-parte orders, awards and reports. The Labour Court by its order dated 19.2.2003 condoned the delay caused in filing the said application on condition of payment of cost of Rs. 2,000/- to each workman within a period of 60 days. As the Government failed and neglected to pay the cost as determined by the Labour Court, the Labour Court rejected the application under Rule 26-A and imposed cost of Rs. 2,500/- qua each workman.

Being aggrieved and dissatisfied with the said action, the petitioners preferred Review Application being No. 2 of 2005 before the learned Labour Court pointing out that the cost of rs. 2,500/- as directed by the Labour Court has been paid and therefore the order dated 27.5.2003 may be recalled. In spite of the same,

the Labour Court by its judgement dated 27.1.2005 was pleased to reject the Review Application.

Being aggrieved and dissatisfied with the order rejecting the Review Application, the petitioners preferred Special Civil Application No. 11815 of 2005 before this Court.

When the aforesaid petition reached hearing before this Court, this Court (Coram: M.R. Shah, J) by its order dated 19.7.2005 allowed the petition and held that the order dated 16.12.2000 passed by the Labour Court, Ahmedabad, in Reference (LCA) No. 1105 of 1998 and the orders passed in Misc. Application No. 331 of 2001 dated 19.2.2003 and dated 27.5.2003 and the order passed in Review Application No. 2 of 2005 dated 27.1.2005 are quashed and set aside. This Court remanded the matter to the Lbour Court, Ahmedabad, for deciding Reference (LCA) No. 105 of 1998 afresh in accordance with

lawn and on merits and after giving an opportunity to all the concerned parties. The petitioner is directed to pay an amount of Rs. 4,000/- (Rupees four thousand) i.e. Rs. 500/- to each workman within a period of one month from the date of the order. This Court further directed the Labour Court concerned to decide and dispose of the aforesaid Reference as per the directions given in the said order within nine months from the date of receipt of the order.

After remand the Labour Court heard the matter. The Labour Court held by its judgement and order dated 25.11.2005 that in view of Section 36 which provides representation of parties particularly Section 36(3) which provides no party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court. In view of the same, the Labour Court has held that the Assistant

Government Pleader Shri P.M. Rami is not entitled to appear in the matter on behalf of the Government.

Being aggrieved and dissatisfied with the said order of the Labour Court, the petitioners have filed this Special Civil Application. When the matter reached hearing before this Court my learned brother Mr. Justice K.S. Jhaveri issued rule and notice as to interim relief was made returnable on 27.3.2006. Pursuant to that notice Mr. T.R. Mishra, learned advocate for the respondents appears. Mr. Gori, learned AGP, appears on behalf of the petitioners states that the Labour Court has decided the matter without adjudicating the matter on merits as the order is passed by the Labour Court without hearing the learned Assistant Government Pleader and in the interest of justice the order dated 25.11.2005 passed by the Labour Court is required to be quashed and set aside. Without allowing the

learned Assistant Government Pleader on behalf of the petitioners, the Labour Court cannot be allowed to pass any order. Therefore, the order passed by the Labour Court on 25.11.2005 is quashed and set aside.

The Labour Court is requested to hear and decide the matter in accordance with law after hearing both the parties on merits. The Labour Court will consider the earlier order passed by this Court on 19.7.2005. If any party desires to lead evidence documentary as well as oral, the Labour Court will permit for the same. The Labour Court is requested to decide the matter after hearing the parties as expeditiously as possible but not later than 31.8.2006. The matter stands disposed of accordingly with no order as to costs. Rule is discharged.

(K.M. MEHTA, J)

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